STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 29, 2014
v	No. 314217 Wayne Circuit Court
ERIC YOUNG, Defendant-Appellant.	LC No. 12-005371-FH

Before: CAVANAGH, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of unarmed robbery, MCL 750.530, and larceny ($1,000 or more but less than $20,000), MCL 750.356(3)(a). We affirm.

Defendant removed mail from the mailbox of his tenant, Lawrence Woods, and it was Woods' social security check. When Woods asked defendant to return his check, defendant refused and began hitting him. Defendant told Woods he would return the check after Woods removed his belongings from defendant's house. Woods called the police, defendant was arrested, and Woods' check was recovered. Defendant was charged with unarmed robbery and larceny and he was convicted as charged.

On appeal, defendant first argues that, because he was conditionally willing to return the check to Woods in exchange for Woods' moving out of defendant's rental house and paying back rent, defendant did not intend to "permanently deprive" Woods of the check. We disagree.

A trial court's factual findings during a bench trial are reviewed for clear error and its conclusions of law are subject to review de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). A challenge to the sufficiency of the evidence following a bench trial is also reviewed de novo. *Id*. Factual findings are sufficient so long as it appears that the trial court was aware of the issues in the case and correctly applied the law; specific findings of fact on each element of the crime are not necessary. *People v Armstrong*, 175 Mich App 181, 185-186; 437 NW2d 343 (1989).

To be convicted of unarmed robbery, a defendant must (1) feloniously take the property of another, (2) by force or violence or assault or putting in fear, and (3) be unarmed. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994); see also MCL 750.530. Unarmed robbery is a specific intent crime for which the prosecution must establish that the defendant

intended to permanently deprive the owner of property. *People v Dupie*, 395 Mich 483, 487; 236 NW2d 494 (1975); *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). Because intent may be difficult to prove, only minimal circumstantial evidence is necessary to show a defendant entertained the requisite intent. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). *People v Harverson*, 291 Mich App 171, 178; 804 NW2d 757 (2010), elaborated on the intent requirement in holding further that:

> to permanently deprive in the context of unarmed robbery "does not require, in a literal sense, that a thief have an intent to *permanently* deprive the owner of the property." *People v Jones*, 98 Mich App 421, 425-426; 296 NW2d 268 (1980). Rather, the intent to permanently deprive includes the retention of property without the purpose to return it within a reasonable time or the retention of property with the intent to return the property on the condition that the owner pay some compensation for its return. *Id*.

The elements of larceny are "(1) [a]ctual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with felonious intent, (4) the taking away must be without the consent and against the will of the owner." *People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999), quoting *People v Anderson*, 7 Mich App 513, 516; 152 NW2d 40 (1967). The specific intent necessary to commit larceny is the intent to steal another's property. *Cain*, 238 Mich App at 120.

The facts of *Harverson* are analogous to those of the instant case. In *Harverson*, the defendant took and withheld a pair of sunglasses, and told complainant he could have them back only if and when he returned the defendant's girlfriend's cell phone, saying, "you get these back when we get the phone back." *Harverson*, 291 Mich App at 173-174. Here, Woods testified that defendant told him he wanted Woods out of his house, and began removing Woods' property. When Woods asked defendant, "do you got my check?," defendant replied, "yeah, and you'll get it as soon as [you] get [your] stuff out [of] my house." After a subsequent fight between the two men, defendant again said, "[o]kay, now get [you] and [your] stuff up out [of] my house. [You] got to go, and you can get your check." Although defendant testified that it was not his intention to keep the check permanently, he agreed that he had no legal authority to take the check from the mailbox and keep it from Woods, and reiterated that it was his intention to keep the check until Woods and his personal property were moved out of the house.

In *Harverson*, this Court considered the defendant's statement "you get these back when we get the phone back," and noted "[i]n other words, defendant intended to retain [complainant's] glasses and *only* return them on the condition that [complainant] pay compensation in the form of returning [the defendant's girlfriend's] phone." *Harverson*, 291 Mich App at 178-179. And the Court concluded: "Such testimony easily satisfies the intent element of unarmed robbery." *Id*. at 179. *Harverson* is controlling of the outcome here: the facts clearly show that defendant was holding Woods' check for "ransom," and, although he stated a willingness to return the check, it is logical to conclude that he did not intend to turn over the check because Woods owed him rent, and he wanted Woods and his aunt to move out. Defendant was properly convicted of unarmed robbery and larceny—$1,000 or more but less than $20,000. The "intent to permanently deprive" element of both crimes was met by defendant's admitted withholding of the disputed check, and willingness to return it only upon a

stated condition. See *id*. at 178-179. And we reject defendant's argument that *Harverson* was wrongly decided.

Next, defendant argues that, because larceny is a necessarily included lesser offense of unarmed robbery, and defendant cannot be convicted of both under the double jeopardy protections of the federal and Michigan constitutions, the lesser, larceny conviction must be vacated. Again, we disagree.

To preserve appellate review of a double jeopardy violation, a defendant must object at the trial court level. *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005). However, "[d]ouble jeopardy issue[s] present[] a significant constitutional question that will be considered on appeal regardless of whether the defendant raised it before the trial court." *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008). Because there was no objection below, defendant must show that a plain error occurred that affected his substantial rights. *People v Cain*, 299 Mich App 27, 41; 829 NW2d 37 (2012), vacated in part on other grounds 495 Mich 874 (2013). Reversal is warranted only if the error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity or public reputation of the judicial proceedings independent of the defendant's innocence. *Meshell*, 265 Mich App at 628.

Both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15; *Blueford v Arkansas*, ___ US ___; 132 S Ct 2044, 2048; 182 L Ed 2d 937 (2012); *People v Ream*, 481 Mich 223, 227; 750 NW2d 536 (2008). These guarantees are substantially identical and should be similarly construed. *People v Davis*, 472 Mich 156, 161; 695 NW2d 45 (2005); *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). The guarantees protect a defendant against both successive prosecutions for the same offense and multiple punishments for the same offense. *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004); *People v Gibbs*, 299 Mich App 473, 489; 830 NW2d 821 (2013).

In the context of multiple punishments for the same offense, as here, a violation of the federal double jeopardy protection depends on the elements of the offenses charged. Under the federal test, two separate offenses generally exist when each offense requires proof of at least one fact that the other offense does not. *United States v Dixon*, 509 US 688, 696; 113 S Ct 2849; 125 L Ed 2d 556 (1993); *People v Denio*, 454 Mich 691, 707; 564 NW2d 13 (1997). The validity of multiple punishments under the Michigan Constitution is also determined under the same elements standard. *People v Smith*, 478 Mich 292, 296, 300, 305, 315-316; 733 NW2d 351 (2007); *Gibbs*, 299 Mich App at 489. If the Legislature has clearly intended to impose multiple punishments, the imposition of multiple sentences is permissible regardless whether the offenses have the same elements, but if the Legislature has not clearly expressed its intent, multiple offenses may be punished if each offense has an element that the other does not. *Smith*, 478 Mich at 316; *Cain*, 299 Mich App at 41-42. In ascertaining legislative intent, a court must focus on the abstract legal elements rather than the particular facts of the case. *People v Garland*, 286 Mich App 1, 5; 777 NW2d 732 (2009).

As discussed above, one of the elements of unarmed robbery is the taking of property "by force or violence or assault or putting in fear." *Johnson*, 206 Mich App at 125-126; see MCL 750.530. There is no "value" element. *Id*. The elements of larceny are also noted above and, for

the type of larceny charged in this case, the statute requires that the property must have a value of $1,000 or more but less than $20,000. MCL 750.356(3)(a). There is no "force or violence or assault or putting in fear" element. See *Cain*, 238 Mich App at 120.

Defendant has not shown that plain error occurred that affected his substantial rights. See *Cain*, 299 Mich App at 41. Defendant's separate convictions for unarmed robbery and larceny greater than $1,000 but less than $20,000 were proper because each crime contains unique elements and, therefore, the federal and state constitutional protections against double jeopardy were not violated. See *Dixon*, 509 US at 696; *Smith*, 478 Mich at 296.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Michael J. Kelly